



MONTANA LEGISLATIVE BRANCH

Legislative Fiscal Division

Room 110 Capitol Building * P.O. Box 201711 * Helena, MT 59620-1711 * (406) 444-2986 * FAX (406) 444-3036

Legislative Fiscal Analyst
CLAYTON SCHENCK

DATE: September 19, 2008

TO: Legislative Finance Committee

FROM: Lois Steinbeck

RE: Statutory Requirements to Offset General Fund Spending

INTRODUCTION

At its June 5, 2008 meeting, the Legislative Finance Committee (LFC) heard a staff report about two statutes that govern expenditure of other funds (nongeneral fund) prior to expenditure of general fund. Several options for LFC action were included in the report. The LFC deferred action related to one statute (17-2-108 – spend nongeneral fund first) and directed staff to define “income” in 17-7-301 (supplemental appropriation transfer). This memo provides a brief background on both statutes, lists the options for LFC action on 17-2-108 and presents two options for changing 17-3-301.

BACKGROUND

As noted in the first report, historically Legislative Fiscal Division and Legislative Audit Division staff have interpreted two statutes - 17-2-108 and 17-7-301 (See Attachment) to require that other sources of funds be used prior to general fund in all situations. However, legislative legal staff has determined that 17-2-108 applies only within a single program. If there are excess funds in a program that could offset general fund costs in different program within the same agency, the decision to transfer funds between programs to offset general fund costs is discretionary. Two options were presented by staff relative to this issue. No action was taken.

The second statute – 17-7-301 – says that a supplemental appropriation may be forwarded for LFC review if the amount appropriated “with all other income” will be insufficient for the operation and maintenance of an agency. Legislative legal staff noted that the word “income” is not defined and is ambiguous. The LFC directed staff to prepare draft language to define income.

OPTIONS

This memo includes several options for LFC consideration. The options presented in the June meeting to the LFC for potential changes to 17-2-108 are presented first as a “refresher”, followed by the options for amendments to 17-7-301.

OPTIONS FOR 17-2-108 (SPEND NONGENERAL FUND FIRST)

The options for action on 17-2-108 provided for LFC consideration at its June meeting were:

Issue 1: Require that an agency offset general fund expenditures whenever there is excess nongeneral fund money that could be used to do so.

- A. The LFC could request a bill draft to require that whenever available, all nongeneral fund money be used prior to general fund within an agency and to require that all available nongeneral fund money and excess general fund money within an agency be used to offset a supplemental transfer appropriation request and a supplement general fund appropriation.
- B. The LFC could request a bill draft to augment Option A by allowing the legislature to “exempt” certain nongeneral fund appropriations from consideration to offset general fund by specifically designating those nongeneral fund appropriations in the general appropriations act.

OPTIONS FOR 17-7-301 (DEFINE INCOME)

The changes to 17-7-301 could be different depending on the action the LFC takes with respect to 17-2-108. If the LFC changes 17-2-108 to require that an approving authority transfer other available funds to offset general fund, the meaning of income clarifies the appropriations that the approving authority must review in determining funds available to offset a potential supplemental appropriation.

Option 1: Define Income – Assuming Changes to Require Nongeneral Fund to be Spent Before General Fund

The LFC could consider changing 17-7-301(2) to replace the term income with the following language.

(2) If the approving authority finds that, due to an unforeseen and unanticipated emergency, the amount actually appropriated for the first fiscal year of the biennium with all other ~~income~~ available general fund, state special revenue and federal special revenue appropriated to an agency will be insufficient for the operation and maintenance of the agency during the year for which the appropriation was made, the approving authority shall, after careful study and examination of the request and upon review of the recommendation for executive branch proposals by the budget director, submit the proposed supplemental appropriation to the legislative fiscal analyst.

Option 2: Define Income – Assuming No Changes to Require Nongeneral Fund to be Spent Before General Fund

If the LFC takes no action to change 17-2-108, then the approving authority would not be required to offset potential general fund supplemental appropriations with funds available in

other programs within an agency. The LFC could still opt to adopt the definition of income in Option 1.

It could also consider requiring the approving authority to identify all other available appropriations that could be used to reduce a potential supplemental appropriation and to report why it would not use those excess funds to reduce a supplemental appropriation. The LFC would then have information about potential ways it could recommend that the legislature reduce general fund outlays when it considers the supplemental appropriation bill.

The LFC could consider changing 17-7-301 to require the approving authority to:

- 1) review and identify the amount of all other appropriations within an agency to determine what funds would be available to offset a potential supplemental appropriation,
- 2) provide the information on available appropriations to offset a supplemental appropriation to the LFC as part of its review of potential supplemental appropriations, and
- 3) determine whether it will transfer available appropriations to offset the supplemental appropriation and if not to provide its justification.

Option 3: The LFC could also add the review/reporting requirement to 17-7-301 as part of the evaluation of a potential supplemental appropriation if it changes 17-2-108.

ATTACHMENT

17-2-108. Expenditure of nongeneral fund money first. (1) Except for the exemptions applicable to the Montana historical society in 22-3-114(5), the Montana state library in 22-1-226(5), the Montana school for the deaf and blind in 20-8-107(5), and the department of public health and human services in 53-1-612, an office or entity of the executive, legislative, or judicial branch of state government shall apply expenditures against appropriated nongeneral fund money whenever possible before using general fund appropriations.

17-7-301. Authorization to expend during first year of biennium from appropriation for second year -- proposed supplemental appropriation defined -- limit on second-year expenditures. (1) ...If the approving authority finds that, due to an unforeseen and unanticipated emergency, the amount actually appropriated for the first fiscal year of the biennium with all other income will be insufficient for the operation and maintenance of the agency during the year for which the appropriation was made, the approving authority shall, after careful study and examination of the request and upon review of the recommendation for executive branch proposals by the budget director, submit the proposed supplemental appropriation to the legislative fiscal analyst.